

22 OCT 1970

OGC Has Reviewed

MEMORANDUM FOR THE RECORD

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SUBJECT: Revision of Use of Privately Owned Vehicles Outside
Post of Duty, Authenticated on 15 October 1970

1. Reference states in paragraph e. "use of privately owned aircraft or boats may not be authorized or approved for the performance of official travel." This preclusion is a self-imposed restriction and not prescribed by Standardized Regulations or other Government policy. This provision was recommended by the Office of General Counsel based upon the decision that an employee travelling on official orders who has an accident resulting from his negligence could subject the Government to a suit under the Federal Tort Claims Act. In view of the potential for high damage claims from accidents by personal owned airplanes and boats, it was the recommendation of the Travel Policy Committee to not authorize the hundreds of authorizing officers of travel orders to allow travel by this means.

2. In the event a given case has merit, it can be submitted to the DD/S for approval notwithstanding the provision of this Regulation.

Executive Officer to the
Deputy Director for Support

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1 - DD/S chrono

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DD/S 70-0620

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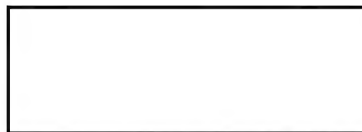
MEMORANDUM FOR: Chairman, CIA Travel Policy Committee

SUBJECT : Use of Private Aircraft on Official Business

REFERENCE : Memo dtd 5 Feb 70 for Admin Officer/ORD,
fr Assistant General Counsel, subj:
Transport of Non-Government Personnel in,
Private Aircraft while on Government Business

1. The Office of General Counsel has suggested that the Deputy Director for Support consider the advisability of establishing official policy or restrictions governing the use of private aircraft while travelling on official business.

2. It is requested that the Travel Policy Committee evaluate the need for such policy or restrictions and develop appropriate recommendations to the Deputy Director for Support.



Support Operations Staff/DDS

Attachments:

1. Reference (as stated)
2. Memo dtd 4 Aug 67 (OGC 67-1532)
for Compt., OSA, fr OGC, Subj:
U. S. Gov't Liability for Acts of
Contract Employee While Using His
Privately Owned Airplane

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OGC 70-0201

5 February 1970

MEMORANDUM FOR: Administrative Officer/ORD

SUBJECT: Transport of Non-Government Personnel
in Private Aircraft while on Government
Business

1. [] has asked if the Agency has any objection to, or restrictions on, the transport of contractor personnel in his private aircraft while he is on official travel. No official policy or restrictions now govern this situation, but the potential legal liability of the Government in the event of an accident is serious enough to warrant a policy position. A copy of this memorandum is being forwarded to the Deputy Director for Support for his consideration.

2. As a matter of law, if an accident resulting from the negligence of the pilot-employee should occur during authorized official travel and result in death or injury to third persons, the Government could be subject to suit under the Federal Tort Claims Act. The question of the Government's liability for acts of an employee while using his privately-owned airplane was discussed in a memorandum from this office to the Comptroller/OSA, dated 4 August 1967 (OGC 67-1532). The law as stated in that memorandum is generally applicable here although that question did not involve liability to contractor personnel riding as passengers nor to other third parties.

3. Assuming that the employee has been authorized to use his private aircraft for travel on official Government business and an accident occurs because of the employee's negligence, it would be deemed to have occurred within the scope of his employment. The contractor personnel riding in the aircraft would probably be considered as guests and their right of recovery would depend upon the guest statute of the state in which the accident occurred. The fact that they are contractor personnel flying to a site on which they are conducting work for the Agency would not necessarily change their position as guests as a matter of law.

4. A more serious problem inherent in the use of privately-owned aircraft for official business is the possibility of an accident involving third parties and resulting in extremely high damages, such as a collision with a commercial aircraft carrying a large number of passengers. There too the Tort Claims Act would permit an action for damages against the Government. No consideration is given here to the possible death or injury to the pilot-employee since he would be covered by the Federal Employees' Compensation Act.

5. It is impossible to state definitively the odds of the Government being sued or incurring a judgment for damages since there are a myriad of possible factual situations, and the applicable law would depend upon the state where the accident occurred. However, William Nelson of the Tort Claims Section, Civil Division, Department of Justice, is of the opinion that the risks are as set forth above.



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Assistant General Counsel

cc: DDS (w/att)

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2. The Federal Tort Claims Act provides that the U. S. Government is liable for the negligence of its employees who, in the scope of their employment, cause personal injury or property damage to others. The question of primary import is whether the employee in question would be acting within the scope of his employment when:

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3. The law of the state where the negligent or wrongful act or omission occurred has been generally applied in determining whether or not a given employee of the United States was acting within the scope of his employment. The difficulty in stating a set of controlling principles in this area is compounded by the fact that no single relevant factor is necessarily controlling. For these reasons the following statement of generalized principles should be carefully compared with the applicable state law.

4. An employee going to or returning from his daily work is generally not considered to be acting within the scope of his employment. The controlling factor seems to be whether the actions of the employee are primarily for the purpose of assisting the employer's work or for the personal convenience of the employee and are merely permitted by the employer in order to make the employment more desirable. If the latter, such actions are not within the scope of employment. The following comment and illustration are from the Restatement, Second, Agency §239, Comment b, and were cited with approval in United States v. Elcazer, 339 U.S. 903; and Paly v. United States, 221 F.2d 953:

The fact that the instrumentality used by the servant is not owned by the master is a fact which may indicate that the use of the instrumentality is not authorized, or if authorized, that its use is not within the scope of employment. The master may authorize the use of a particular instrumentality without assuming control over its use as a master. The fact that he does not own it or has not rented it upon such terms that he can direct the manner in which it may be used indicates that the servant is to have a free hand in its use. If so, its control by the servant, although upon his master's business, is not within the scope of employment. (Emphasis added.)

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The master agrees with A, his servant, to pay for A's transportation upon public vehicles such as railway trains and street cars. As an alternative, A is permitted to use his own automobile for transportation, charging to the master the regular train fare. A is paid by the week, with indefinite hours of labor. In going to a place at which he is to perform work for the master, A drives his own car, carrying thereon necessary tools and materials belonging to the master. In the absence of evidence that A owes P any duty of obedience in the details of operating the automobile, such driving is not within the scope of employment.

5. Applying these general principles to the facts given above, it would appear that the subject employee would not be acting within the scope of his employment when using his privately owned airplane for transportation between his home in X and either of his posts of work, and, therefore, would not subject the Government to liability for his negligent acts. To further buttress this position it would probably be to the Government's advantage in amending the employee's contract to authorize the use of his airplane and reimbursement, to provide, in addition, language similar to the following:

Such authorization and reimbursement by the U. S. Government for travel between the employee's place of residence and post of work, are hereby acknowledged to be for the personal convenience of the employee for the purpose of assisting the employee to perform what is essentially his own job of getting to or from work.

As to the situation where the employee travels by airplane between it is the opinion of the undersigned from the authorities reviewed that such travel would be considered within the scope of his employment. The work has already begun at one post or the other and the employee is in the process of conducting the employer's business.

6. The Federal Employees' Compensation Act provides for compensation to the employee who is injured on duty, or in case of the employee's death, to his dependents, and is the exclusive remedy. It would appear that the test enunciated above for the Federal Tort Claims Act "scope of employment," would apply equally to the Federal Employees' Compensation Act "performance of duty." Therefore, there would be no recovery under the Federal Employees' Compensation Act for injury or death caused while traveling between the employee's residence in X and post of work.

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X1 7. It should be noted that damage to the employee's airplane would not be covered by the Federal Tort Claims Act, but rather his own insurer. It is possible that he would be charged higher premiums for "business use" or, more importantly, that damage to the airplane would not be covered because of an accident while traveling between [redacted] because the employee did not have "business use" coverage. It should also be noted that reimbursement for the travel between his residence and post of work is taxable income to the employee.

SIGNED

[redacted]
Office of General Counsel

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36 SEP 1970

MEMORANDUM FOR: Chief, Support Services Staff

THROUGH : Travel Policy Committee

SUBJECT : Proposed Revision of [] Use of
Privately Owned Vehicle Outside Post of Duty

REFERENCES : (a) SSA/DDS Memorandum for Chairman, Travel
Policy Committee, dated 12 December 1969,
Same Subject

(b) Chairman, Travel Policy Committee reply
to SSA/DDS memorandum dated 19 March 1970

1. There is attached a proposed revision of []
which provides a policy respecting the determination of advantage to
the Government for authorized POV use in connection with PCS moves
to or from destinations outside CONUS which for reasons outlined in
reference (b) is generally consistent with Foreign Service Travel
Regulations.

2. Provision is also made to preclude authorization or approval
for the use of privately owned airplanes or boats in the performance
of official business. This proposed change is based on determinations
made by the Travel Policy Committee in consideration of the policy
implications of such usage including in particular the potential for
high damage claims in the event of accident.

[]
Director of Finance

Attachments

Distribution:

Original & 2/- Addressee, w/atts.

1 - EO/DDS, w/atts.

1 - SSA/DDS, w/atts.

1 - Each TPC Member, w/atts.

2 - D/Finance, w/atts.

1 - OF Registry, w/atts.

3 - PPS Files, w/ []

OF/PPS [] jdb(9/18/70)

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Excluded from automatic
downgrading and
declassification

TRAVEL

VEHICLE

14. USE OF PRIVATELY OWNED ~~CONVEYANCE~~ ^{VEHICLE} ~~FOR TRAVEL~~ ^{ON DUTY} ~~WHICH IS ADVANTAGEOUS TO THE GOVERNMENT~~ ^{ON A MILEAGE BASIS}

(1) (basis for the vehicle

- a. ~~DETERMINATION OF ADVANTAGE.~~ Before use of a privately owned ~~conveyance~~ ^{vehicle} is authorized, the authorizing official will determine ~~whether it is feasible to use common-carrier transportation or a Government-owned conveyance rather than a privately owned conveyance~~ ^{whether use of a privately owned conveyance is advantageous to the Government}. A determination of feasibility will include consideration of the availability of common-carrier transportation or Government-owned conveyances, suitability of schedules, and other applicable factors. In determining whether use of a privately owned conveyance is advantageous to the Government, more expeditious transaction of the public business, economy, and effectiveness of employee performance, as well as other advantages or disadvantages to the Government will be considered in each case. Use of a privately owned ~~conveyance~~ ^{vehicle} may be authorized even though common carrier is the preferred means of transportation from the Government's standpoint, but the amount of reimbursement for such use will be limited as prescribed in subparagraph ~~below~~ ^{(1) c}.

- b. ~~WHEN ADVANTAGEOUS TO THE GOVERNMENT.~~ When use of a privately owned ~~conveyance~~ ^{vehicle} is determined to be more advantageous to the Government than travel by common carrier, travel may be authorized or approved on a mileage basis not to exceed 8 cents a mile for motorcycles or motor scooters and 12 cents a mile for other ~~motor vehicles and airplanes~~ ^{vehicles}. The authorizing official is responsible for fixing rates within the maximum that will most nearly compensate the traveler for necessary expenses. The provisions in section 2.3 of attachment 3 will apply when privately owned ~~automobiles~~ ^{vehicles} are used in connection with wholly domestic PCS travel or in connection with wholly domestic entrance-on-duty travel of appointees and student trainees.

- c. ~~DISTANCES.~~ Distances between points traveled should be as shown in standard highway mileage guides or by speedometer readings. Any substantial deviations from distances shown in standard highway mileage guides must be explained. ~~When travel is performed by a privately owned airplane, distances are to be determined from airways charts issued by the Coast and Geodetic Survey, Department of Commerce. If a detour is necessary on account of adverse weather, mechanical difficulty, or other unusual conditions, the additional mileage may be included and must be explained.~~

- d. ~~ALLOWABLE TRAVEL TIME.~~ Allowable time for travel by privately owned ~~conveyance~~ ^{vehicle} is limited to that reasonably required. Within the United States 350 miles per day is considered the normal driving distance. Outside the United States, a daily mileage standard is not established due to the variations in driving conditions. Interruptions and deviations resulting in travel time in excess of that normally required must be fully explained by the traveler.

- e. ~~ADDITIONAL ALLOWABLE EXPENSES.~~ The actual costs of automobile parking fees, ferry fares, bridge, road, and tunnel tolls are payable in addition to the mileage allowances.

- (5) f. ~~JOINT TRAVEL.~~ When two or more employees travel together in the same ~~conveyance~~ ^{vehicle}, payment of mileage expenses may be made to only one employee.

- g. ~~WHEN USED FOR PERSONAL CONVENIENCE.~~ If a privately owned ~~conveyance~~ ^{vehicle} is used for official travel and no determination of advantage to the Government is made, reimbursement of transportation expenses on a mileage basis, including related per diem, will be limited to the constructive cost of common carrier transportation and related per diem for all authorized travelers traveling together, determined as indicated below. Actual travel time in excess of

- (2) When an employee is appointed, transferred, or separated, and the employee or a member of his family who is authorized to travel drives a privately owned vehicle over all or part of the distance between the authorized points of origin and destination, such mode of transportation is determined advantageous to the Government provided that (a) the employee is eligible to ship household effects between the authorized points of origin and destination, and (b) when the vehicle is authorized to be shipped at Government expense and is driven for a part of the distance, no additional shipping costs are incurred by transporting the vehicle to or from a point on the traveler's route rather than via a usual shipping route. The automatic determination of advantage to the Government does not apply when the vehicle is used in connection with temporary duty or home leave; however, the authorizing official

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VEHICLE

14. USE OF PRIVATELY OWNED ~~CONVEYANCE~~ OUTSIDE POST OF DUTY

(1) basis for the vehicle

- a. ~~DETERMINATION OF ADVANTAGE~~ Before use of a privately owned ~~conveyance~~ vehicle is authorized, the authorizing official will determine ~~whether it is feasible to use common-carrier transportation or a Government-owned conveyance rather than a privately owned conveyance~~ whether use of a vehicle and (a) privately owned conveyance is advantageous to the Government. A determination of feasibility will include consideration of the availability of common-carrier transportation or Government-owned conveyances, suitability of schedules, and other applicable factors. In determining whether use of a privately owned conveyance is advantageous to the Government, more expeditious transaction of the public business, economy, and effectiveness of employee performance, as well as other advantages or disadvantages to the Government will be considered in each case. Use of a privately owned conveyance may be authorized even though common carrier is the preferred means of transportation from the Government's standpoint, but the amount of reimbursement for such use will be limited as prescribed in subparagraph ~~below~~ vehicle

- b. ~~WHEN ADVANTAGEOUS TO THE GOVERNMENT~~ (1) c When use of a privately owned conveyance is determined to be more advantageous to the Government than travel by common carrier, travel may be authorized or approved on a mileage basis not to exceed 8 cents a mile for motorcycles or motor scooters and 12 cents a mile for other ~~motor vehicles and airplanes~~ vehicles. The authorizing official is responsible for fixing rates within the maximum that will most nearly compensate the traveler for necessary expenses. The provisions in section 2.3 of attachment 3 will apply when privately owned ~~automobiles~~ vehicles are used in connection with wholly domestic PCS travel or in connection with wholly domestic entrance-on-duty travel of appointees and student trainees.

- c. ~~DISTANCES~~ (2) Distances between points traveled should be as shown in standard highway mileage guides or by speedometer readings. Any substantial deviations from distances shown in standard highway mileage guides must be explained. ~~When travel is performed by a privately owned airplane, distances are to be determined from airways charts issued by the Coast and Geodetic Survey, Department of Commerce. If a detour is necessary on account of adverse weather, mechanical difficulty, or other unusual conditions, the additional mileage may be included and must be explained.~~

- d. ~~ALLOWABLE TRAVEL TIME~~ (3) Allowable time for travel by privately owned conveyance is limited to that reasonably required. Within the United States 350 miles per day is considered the normal driving distance. Outside the United States, a daily mileage standard is not established due to the variations in driving conditions. Interruptions and deviations resulting in travel time in excess of that normally required must be fully explained by the traveler.

- e. ~~ADDITIONAL ALLOWABLE EXPENSES~~ (4) The actual costs of automobile parking fees, ferry fares, bridge, road, and tunnel tolls are payable in addition to the mileage allowances.

- f. ~~JOINT TRAVEL~~ (5) When two or more employees travel together in the same ~~conveyance~~ vehicle, payment of mileage expenses may be made to only one employee.

- g. ~~WHEN USED FOR PERSONAL CONVENIENCE~~ If a privately owned conveyance vehicle is used for official travel and no determination of advantage to the Government is made, reimbursement of transportation expenses on a mileage basis, including related per diem, will be limited to the constructive cost of common carrier transportation and related per diem for all authorized travelers traveling together, determined as indicated below. Actual travel time in excess of

- (2) When an employee is appointed; transferred, or separated, and the employee or a member of his family who is authorized to travel drives a privately owned vehicle over all or part of the distance between the authorized points of origin and destination, such mode of transportation is determined advantageous to the Government provided that (a) the employee is eligible to ship household effects between the authorized points of origin and destination, and (b) when the vehicle is authorized to be shipped at Government expense and is driven for a part of the distance, no additional shipping costs are incurred by transporting the vehicle to or from a point on the traveler's route rather than via a usual shipping route. The automatic determination of advantage to the Government does not apply to appointment, transfer or separation travel when combined with temporary duty or home leave; however, the authorizing official may determine that use of a privately owned vehicle for part or all of such combined travel is advantageous to the Government.

New

TRAVEL

constructive common carrier travel time will be charged to annual or other leave as appropriate.

(1) The mileage payment will not exceed the constructive cost of coach accommodations (or tourist or economy accommodations if a carrier ~~used~~ ^{uses} ~~these terms~~ ^{instead of coach accommodations}) on airplanes when such service is provided by a carrier. If not provided, the comparison will be made with standard-class accommodations, if provided, otherwise with first-class accommodations. When accommodations are provided on both jet and propeller-driven planes the comparison will be made with the jet planes. (For the purpose of subparagraph ~~a~~ ^c a class of service is considered to be "provided" by a carrier when it is scheduled on flights serving origin and destination points, regardless of whether space would have been available had the traveler used air transportation for the official travel.)

- (a) When none of the accommodations described above are provided by an air carrier, the mileage payment will be limited to the constructive cost of first-class rail transportation, or coach accommodations when ~~the elapsed time of the rail journey is four hours or less~~ ^{of} ~~The constructive cost comparison may also be made with rail transportation, even though air transportation is provided, when an administrative determination is made that such comparison, including related per diem, is more economical and the travel order or other administrative directive so provides.~~ ^{would be}
- (b) When neither air nor rail accommodations are provided, the mileage payment will be limited to the constructive cost of bus transportation.
- (c) In determining the constructive common carrier cost there will also be included the usual transportation costs to and from the common carrier terminals. In addition, the cost of excess baggage will be included when it would have been allowed had the traveler used the carrier upon which the constructive transportation costs are determined, provided the traveler certifies to the weight of the baggage or presents other acceptable evidence of its weight.
- (2) The constructive per diem will be limited to the amount otherwise allowable if the traveler had used the carrier upon which the constructive transportation costs are determined.
- (3) In making the foregoing constructive cost comparisons of transportation and per diem, scheduled departures and arrivals of planes, trains, and buses at unreasonable hours will be disregarded and departures at reasonable hours will be used in constructive cost comparisons. (For this purpose, "unreasonable hours" means those which would unduly inconvenience the traveler or adversely affect his safety, or which would result in unduly increasing the constructive per diem.) ^c
- (4) For the purposes of subparagraph ~~a~~ ^c the constructive cost of transportation will include the cost of the applicable common carrier transportation for all authorized travelers traveling together.

~~25X1~~ TRANSPORTATION ALLOWANCE. The provisions of apply when a transportation allowance has been authorized as reimbursement for the use of a privately owned vehicle for official business.

e. TRAVEL BY AIRCRAFT OR BOAT. Use of privately owned aircraft or boats may not be authorized or approved for the performance of official travel. New

f. ~~X~~ UNUSUAL CIRCUMSTANCES. Upon recommendation and justification by an Operating Official, the Deputy Director for Support may determine that the maximum mileage rates prescribed above are inadequate to meet operational and security requirements peculiar to the Agency and may prescribe higher rates for specified areas abroad.

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